

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Judith Le	Team: Squad #12	CCRB Case #: 201708558	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 10/14/2017 5:54 PM	Location of Incident: 42nd Street subway station (West 44th and 8th Avenue entrance)	Precinct: 14	18 Mo. SOL 4/14/2019	EO SOL 4/14/2019	
Date/Time CV Reported Sat, 10/14/2017 6:21 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 10/14/2017 6:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edwin Soto	05614	935778	TB M/TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Katie Miracco	14798	956101	TB M/TF
2. POF Nikkia Prescod	02748	957053	TB M/TF

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edwin Soto	Abuse: Sergeant Edwin Soto interfered with § 87(2)(b) s use of a recording device.	
B.SGT Edwin Soto	Discourtesy: Sergeant Edwin Soto spoke discourteously to § 87(2)(b)	
C.SGT Edwin Soto	Abuse: Sergeant Edwin Soto threatened to arrest § 87(2)(b)	
D.SGT Edwin Soto	Force: Sergeant Edwin Soto used physical force against § 87(2)(b)	

Case Summary

On October 14, 2017, § 87(2)(b) and § 87(2)(b) filed two separate complaints online via the CCRB. At 6:20 p.m., § 87(2)(b) filed his complaint via CRM Correspondence No. 1-1-§ 87(2)(b). At 6:22 p.m., § 87(2)(b) filed her complaint via CRM Correspondence No. 1-1-§ 87(2)(b).

On October 14, 2017, at 5:54 p.m., at the 42nd Street Subway Station near the 44th Street and 8th Avenue entrance in Manhattan, § 87(2)(b) was issued a summons by PO Kelly Miracco of the Transit Borough Manhattan Task Force for fare evasion. While waiting for PO Miracco to issue him a summons, § 87(2)(b) witnessed a separate police interaction. As he recorded the interaction on his cell phone, Sgt. Edwin Soto and PO Nikkia Prescod of the Transit Borough Manhattan Task Force approached him. Sgt. Soto allegedly told him to not, “Fucking record” (**Allegation A: Abuse of Authority-Interference with recording**, § 87(2)(g) and **Allegation B: Discourtesy-Word**, § 87(2)(g) and wrapped his hand around § 87(2)(b)'s phone lens (also **Allegation A: Abuse of Authority-Interference with recording**, § 87(2)(g) Sgt. Soto then threatened § 87(2)(b) by showing him his handcuffs and telling him if he continued to record, he would arrest him (**Allegation C: Abuse of Authority-Threat of arrest**, § 87(2)(g). When § 87(2)(b) continued to try to record, Sgt. Soto pushed § 87(2)(b) against the wall and held him against the wall with his forearm (**Allegation D: Force-Physical Force**, § 87(2)(g). In response, § 87(2)(b) asked Sgt. Soto if he was being arrested. Sgt. Soto released him and flashed his handcuffs again (also **Allegation C: Abuse of Authority-Threat of arrest**, § 87(2)(g). Shortly thereafter, PO Miracco issued § 87(2)(b) a summons for fare evasion, and § 87(2)(b) left. § 87(2)(b) who witnessed the incident, filed an independent complaint on § 87(2)(b)'s behalf.

Video footage was provided by § 87(2)(b) from his cellphone camera from October 14, 2017. The video is not-time stamped. There is audio. The length of the video is less than one second. MTA footage was also obtained, but did not show the incident or parties involved, so was not used in the analysis of the recommended dispositions.

§ 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Edwin Soto interfered with § 87(2)(b)'s use of a recording device.

Allegation (B) Discourtesy: Sergeant Edwin Soto spoke discourteously to § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Edwin Soto threatened to arrest § 87(2)(b)

Allegation (D) Force: Sergeant Edwin Soto used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was summonsed by PO Miracco for fare evasion. After being stopped, he was not frisked, handcuffed, or placed under arrest. § 87(2)(g)

§ 87(2)(b) (**Board Review #1**) stated that upon arriving to the station, the Metrocard machine was only accepting cash, so he walked through the entrance gate to the A/C/E mezzanine without

paying. He was immediately stopped by PO Miracco. After obtaining his identification, PO Miracco asked § 87(2)(b) to follow her and wait outside the Command Station while she ran his information. As § 87(2)(b) was waiting, he saw a police officer with a black male standing about 15 to 20 feet away. § 87(2)(b) thought the officer's demeanor was confrontational so he decided to record. § 87(2)(b) had been recording for about 15 seconds when Sgt. Soto exited the Command Station and immediately told § 87(2)(b) something along the lines of, "Don't fucking record."

§ 87(2)(b) was holding his phone in the bottom of his right hand, and Sgt. Soto wrapped his fist around the top of § 87(2)(b)'s phone and lens. Sgt. Soto's hand was directly on top of § 87(2)(b)'s hand and phone. § 87(2)(b) told Sgt. Soto that he understood his rights as a NYC citizen, and Sgt. Soto again replied that § 87(2)(b) could not record and needed to turn off his phone. Sgt. Soto let go of § 87(2)(b)'s phone, and § 87(2)(b) put his hand and phone down. § 87(2)(b) again repeated that it was his right to record, and Sgt. Soto flashed his handcuffs at him, which § 87(2)(b) felt was a threat to arrest him if he did not stop recording.

§ 87(2)(b) continued to repeat that he knew his rights, and Sgt. Soto told him about a half dozen times to stop recording. § 87(2)(b) who was still holding his phone then made a motion to try and record again. In response, Sgt. Soto forcefully grabbed his right shoulder with both hands and spun him around so that he was facing the wall. Sgt. Soto was holding § 87(2)(b) by his forearm on the top of his back so that he could not move. § 87(2)(b) asked Sgt. Soto if he was going to arrest him and Sgt. Soto eventually replied, "No," and released the pressure from § 87(2)(b)'s back. § 87(2)(b) turned back around to face Sgt. Soto, who again flashed him his handcuffs. PO Miracco then returned with a summons for fare evasion. § 87(2)(b) took the documents and left. § 87(2)(b) was not familiar with § 87(2)(b). While he thought he saw a female witness standing about 30 feet from him, he did not speak to her during the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

In § 87(2)(b)'s video footage (**Board Review #2**), he points his camera on a male officer, who is standing right in front of him. A dark-skinned female officer is standing behind the male officer and looking directly at the camera. The male officer says, "You're gonna take a written..." while the camera shakes and then shuts off.



§ 87(2)(b).mp4

§ 87(2)(b) (**Board Review #3**) stated that she had just gotten off the downtown E train when she saw a black man protesting his arrest and stopped to watch. § 87(2)(b) was also watching and videotaping the interaction on his cellphone. All of a sudden, the Command Station doors opened and Sgt. Soto came out with PO Prescod. Sgt. Soto spoke to § 87(2)(b) who was standing behind § 87(2)(b). § 87(2)(b) was not familiar with § 87(2)(b). § 87(2)(b) was still watching the arrest, but when she turned around, she saw Sgt. Soto make a swiping motion to grab § 87(2)(b)'s cellphone and § 87(2)(b) pull his phone and arm towards his body. From about five feet away, she saw Sgt. Soto try to block § 87(2)(b) from taking the video by standing in front of him, stretching out his arms, and bobbing and weaving. § 87(2)(b) who

appeared agitated and nervous in his facial expressions, continued to try and film around Sgt. Soto.

§ 87(2)(b) said when it became apparent that § 87(2)(b) did not intend to stop recording, Sgt. Soto pushed him against the wall and visibly restrained him. § 87(2)(b)'s arms were against the wall, and he was holding his cellphone in one of his hands. Sgt. Soto had his left forearm draped across § 87(2)(b)'s chest, and his right hand was holding down § 87(2)(b)'s left arm, which was still holding the cellphone. PO Prescod was standing next to § 87(2)(b) and observing what was going on. § 87(2)(b) saw § 87(2)(b) try to push away from Sgt. Soto. She heard Sgt. Soto tell § 87(2)(b) he was not complying and aggressively ask him, "Why are you doing this?" Sgt. Soto also told § 87(2)(b) "You don't want to continue this, you better not continue, do you really want to continue?" § 87(2)(b) looked terrified, but kept repeating that he knew his rights. At this point, § 87(2)(b) became emotional and yelled at Sgt. Soto, "Stop doing that, you're hurting him!" The officers ignored her, and Sgt. Soto yelled at § 87(2)(b) several times, "If you continue, I'm going to arrest you!" § 87(2)(b) noted that although in her initial complaint she said that Sgt. Soto used profanity, at the time of her interview, she was 80% sure that Sgt. Soto said, "Fucking," a few times, saying, "You don't fucking want to do this; I'll fucking arrest you." She did not see Sgt. Soto flash his handcuffs. After § 87(2)(b) became silent, Sgt. Soto released him. As he was being released, § 87(2)(b) moved away and looped his cellphone back in the direction of the arrest. Sgt. Soto threw § 87(2)(b) back against the wall and § 87(2)(b) looked scared. § 87(2)(b) looked around to see if there were any other bystanders, and when she looked back she saw Sgt. Soto hand § 87(2)(b) a yellow slip of paper and say something like, "Don't ever do that again." § 87(2)(b) tried to follow § 87(2)(b) to see if he was okay, but he quickly ran onto a train. § 87(2)(b), § 87(2)(g)

Sgt. Soto (**Board Review #4**) stated he was in the 42nd Street Command Center when he saw § 87(2)(b) appear to speak loudly via the video cameras posted outside. Sgt. Soto could not hear what was going on, so he went outside. The officers outside informed him that § 87(2)(b) and another individual had been stopped for theft of service. At that time, § 87(2)(b) was trying to record a separate police incident involving another person that was occurring about five feet away. § 87(2)(b) was not interfering with the other stop, but Sgt. Soto approached § 87(2)(b) and informed him that he could not record anything on his phone because he was being detained. Sgt. Soto explained that if someone was being detained for an infraction or crime, they were not allowed to put their hands in their pocket, touch anything, or move around. At the time that Sgt. Soto approached § 87(2)(b) he was either going to be arrested or issued a summons. § 87(2)(b) appeared irate and upset and responded in a loud tone. Sgt. Soto could not remember what § 87(2)(b) said, but he replied, "Sir, you cannot record at this time." Sgt. Soto told § 87(2)(b) at least two times that he could not record, but he would not stop. Sgt. Soto could not remember if he used profanity, but stated that he again told § 87(2)(b) he could not record and tried to grab the phone from his right hand. Sgt. Soto could not remember if he threatened to arrest him, noting that he could not remember exactly what he told § 87(2)(b). He emphasized the only thing he could remember doing was trying to get § 87(2)(b) to stop recording because he was not allowed to record at that time. He could not remember if he touched any part of § 87(2)(b)'s body, pushed him against a wall, or placed his forearm against him. He did not mention showing § 87(2)(b) his handcuffs. Sgt. Soto stated that after he put his hand on § 87(2)(b)'s

hand, § 87(2)(b) said he would put the phone away. § 87(2)(b) then put his phone in his pocket and Sgt. Soto walked away.

PO Miracco (**Board Review #5**) said she instructed § 87(2)(b) to wait outside the Transit Command Center while she conducted a warrant check. During this time, she did not see § 87(2)(b) interact with any other officers, and she could not see what was going on outside because the Command Center windows were painted black. After completing the background check, PO Miracco wrote § 87(2)(b) a summons and exited the Command Center. She could not recall what § 87(2)(b) was doing. PO Miracco saw Sgt. Soto standing near the barricades of the Command Center, but did not see him interact with § 87(2)(b) or make physical contact with him. PO Miracco explained the summons to § 87(2)(b) and then he left.

Summons #§ 87(2)(b) (**Board Review #6**) was issued to § 87(2)(b) by PO Miracco. The narrative states, “At 5:54 p.m., PO Observed respondent jump over the turnstile avoiding legal payment of fare.”

PO Prescod (**Board Review #7**) stated at 6:10 p.m., she was inspecting the 43rd and 8th Avenue stairwell. Prior to that, she did not recall seeing § 87(2)(b) or Sgt. Soto interacting with him. PO Prescod said she saw Sgt. Soto in the command, but did not see him push anyone against the wall, grab someone’s phone, or tell someone not to record.

P.G. 208-03 states that a person remaining in the vicinity of a stop or arrest to observe shall not be subject to arrest for Obstructing Governmental Administration (PL § 195.05), unless the officer has probable cause to believe the person is obstructing governmental administration. Observers at the scene of police incidents may take photographs, videotapes or tape recordings, so as long as they do not endanger the safety of officers or other persons, or violate the law. Taking photos or video alone does constitute probable cause to arrest (**Board Review #8**).

PL § 195.05 states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function (**Board Review #9**).

P.G. 203-09 states that when engaging with the public, officers must be courteous and respectful (**Board Review #10**).

P.G. 221-02 says that officers at the scene of a police incident should apply no more than reasonable force necessary to gain control (**see Board Review #11**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- Sgt. Soto has been a Member of Service for thirteen years and has been a subject in four previous CCRB complaints, totaling eight allegations, with no substantiations. § 87(2)(g)
- This is § 87(2)(b)'s first CCRB complaint (**Board Review #12**).
- This is § 87(2)(b)'s first CCRB complaint (**Board Review #13**).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined mediation because he wanted the officer to be disciplined.
- An OCA search conducted on January 10, 2018 revealed that § 87(2)(b) did not have any previous criminal convictions (**Board Review #14**).
- An OCA search conducted on January 18, 2018 revealed that § 87(2)(b) did not have any previous criminal convictions (**Board Review #15**).
- As of January 3, 2018, a Notice of Claim has not been filed by § 87(2)(b) (**Board Review #16**).

Squad No.: 12

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date